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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 UNITED STATES OF AMERICA,
16 Plaintiff,
17 v.
18 ROBERT T. BROCKMAN,
19 Defendant.
20

Case No. 3:20-cr-00371-WHA

DECLARATION OF PETER J.
ROMATOWSKI IN SUPPORT OF
DEFENDANT ROBERT T.
BROCKMAN'S MOTION FOR A
HEARING TO DETERMINE
WHETHER MR. BROCKMAN IS
COMPETENT TO ASSIST IN HIS
DEFENSE

21 **DECLARATION OF PETER J. ROMATOWSKI**
22

23 I, Peter J. Romatowski, declare as follows:

24 1. I am a member of the bars of the District of Columbia, the states of Montana and
25 New York, the United States Supreme Court and various other federal courts. I am of counsel to
26 the law firm Jones Day, counsel for the defendant Robert T. Brockman. I make this Declaration
27 in support of Defendant Robert T. Brockman's Motion For a Hearing to Determine Whether
28 Mr. Brockman is Competent to Assist in His Defense.

1 2. I served from 1979 to 1986 as an assistant United States attorney. In that role I
2 investigated, prosecuted and tried cases involving the full range of federal offenses, with a
3 particular focus on securities fraud. *See, e.g., United States v. Winans*,
4 612 F. Supp. 827 (S.D.N.Y. 1985), *aff'd in part, rev'd in part part sub nom. United States v.*
5 *Carpenter*, 791 F.2d 1024 (2d Cir. 1986), *aff'd sub nom. Carpenter v. United States*,
6 484 U.S. 19 (1987). Since 1986, I have been engaged in the private practice of law, specializing
7 almost exclusively in white collar criminal defense, and defense of regulatory investigations and
8 enforcement actions by the U.S. Securities and Exchange Commission. I am a fellow of the
9 American College of Trial Lawyers.

10 3. In the course of that experience, I have engaged with hundreds of witnesses, in
11 order to gain their assistance in the prosecution or defense of federal criminal cases. This
12 includes clients, one of whom was approximately Mr. Brockman's age, who assisted effectively
13 in their own successful defense of complex regulatory charges in federal criminal jury trials. I
14 have testified in a federal grand jury (as a law student) and in a federal criminal jury trial (while
15 in private practice, called as a witness by the government). I believe that I recognize those
16 cognitive and other skills that enable individuals to assist effectively in the prosecution or defense
17 of such cases, whether as a witness or a defendant. It is my firm opinion that Mr. Brockman
18 cannot do so.

19 4. From that experience, I also have an appreciation of the participation that is
20 necessary from knowledgeable witnesses in order to assemble and present in court a case of the
21 complexity of this one, whether on behalf of the prosecution or the defense. Mr. Brockman's
22 assistance is indispensable to the defense of the Indictment, and he is unable to render it.

23 5. I first met Mr. Brockman when my firm was retained as his counsel in September
24 2018. Between that date and March 2020 when the pandemic prevented further meetings in
25 person, my colleagues and I met with Mr. Brockman ten times at his home in Houston, and once
26 at a summer residence in Colorado. Each of these meetings was several hours in length. In
27 addition, we have had countless meetings with Mr. Brockman by telephone.
28

1 6. By this declaration, I do not and do not intend to waive Mr. Brockman's attorney-
2 client privilege or work product protection. I have not disclosed any conversation by which
3 Mr. Brockman requested or we gave legal advice. I disclose below only that part of a
4 conversation on July 18, 2019 which Mr. Brockman initiated for another purpose, to convey
5 information to us concerning his medical condition, and my personal observations of his physical
6 and cognitive condition.

7 7. On July 18, 2019, I met with Mr. Brockman at a summer residence in Aspen,
8 Colorado. Two other Jones Day attorneys, Kathryn Keneally and Georgina Druce, participated in
9 that meeting by conference call.

10 8. At the outset of the July 18, 2019 meeting, Mr. Brockman told us that he had an
11 issue that he wanted to raise. He showed me a binder that contained medical reports. He
12 explained that he had been diagnosed with Parkinson's disease and dementia. He expressed
13 surprise concerning this diagnosis. He explained that he wanted us to understand that he may
14 need us to address issues with him more slowly, that he may have some difficulty remembering
15 what we told him, and that he may need to review things several times to understand what he
16 needed to know. He never suggested or asked whether this medical condition would have any
17 legal consequence for the criminal investigation.

18 9. We subsequently obtained the medical reports from Mr. Brockman. I now
19 understand that Mr. Brockman's doctors diagnosed that he has cognitive impairment and other
20 symptoms consistent with Parkinson's disease, parkinsonism, or Lewy body dementia, or some
21 combination of the three.

22 10. The information provided in the medical reports is consistent with and helped me
23 to better understand my experience with Mr. Brockman throughout this representation.

24 11. In my experience in communicating with Mr. Brockman, I have found that he has
25 consistently been unable to assist in his defense, either by providing his own account of past
26 events, or by providing leads to other evidence. He is unable to review and evaluate documents.
27 I have also experienced repeated instances in which he did not retain information that we had
28 provided to him. In certain instances, when we would provide him with information, he would

1 report it back to us a few days later, often in garbled form, as if it were something that he
2 remembered separate from and without regard to having heard it from us. In other instances, he
3 repeatedly provides us the same information, regardless of relevance.

4 12. I do not believe that this experience has been the product of any deliberate
5 deception on Mr. Brockman's part. There have been many occasions where Mr. Brockman
6 understood our questions sufficiently to recognize that an obvious answer – or any answer at all –
7 would better serve his interests. Yet he is unable to provide any answer.

8 13. My experience with Mr. Brockman is consistent with – in fact is well explained by
9 – the findings that I have read in the medical reports from his treating physicians.

10 14. Further, it has been my layman's observation that Mr. Brockman's disabilities
11 have worsened over time. He has become more physically frail. He has slowed down in many
12 respects, from his walking gait to his response time in ordinary conversation. He is having
13 increasingly greater difficulty in understanding information that we provide or inquiries that we
14 put to him.

15 15. Stated at its simplest, Mr. Brockman has proven unable to assist us in his defense.

16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed in McLean, Virginia, on December 8, 2020.

18
19 
20 Peter J. Romatowski